

# Disciplinary and Other NASD Actions

## REPORTED FOR OCTOBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of September 2004.

### Firms Fined, Individuals Sanctioned

EDI Financial, Inc. (CRD #15699, Dallas, Texas) and Martin William Prinz (CRD #1330601, Registered Principal, Southlake, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$25,000, jointly and severally. Additionally, the firm was censured and Prinz was suspended from association with any NASD member in any principal capacity for 30 business days. Without admitting or denying the allegations, the firm and Prinz consented to the described sanctions and to the entry of findings that the firm, acting through Prinz, engaged in a securities business when the firm's net capital was below the minimum requirement and failed to accurately file FOCUS Part IIA reports. The findings also stated that the firm, acting through Prinz, failed to keep current its general ledger and trial balance, failed to have a financial and operations principal (FINOP), and maintained the NASD registration of the firm's former FINOP who was not involved in the financial and operational management of the firm. In addition, NASD found that the firm, acting through Prinz, failed to establish and maintain a system to supervise the activities of an owner of the firm who was performing duties requiring registration as a FINOP but was not registered as a FINOP; and failed to establish and maintain a system to supervise, including the establishment and maintenance of written procedures, the accuracy and maintenance of the firm's financial books and records so as to ensure the firm complied with all aspects of the net capital rule.

Prinz' suspension began October 14, 2004, and will conclude at the close of business November 12, 2004. (NASD Case #C06040026)

Kirlin Securities, Incorporated (CRD #21210, Syosset, New York), Anthony Joseph Kirincic (CRD #1499511, Registered Principal, Dix Hills, New York), AiLin Khoo Dorsey (CRD #2198636, Registered Principal, South San Francisco, California), Paul Thomas Garvey (CRD #1214388, Registered Representative, Orinda, California), and Brian Francis McEnery (CRD #2735200, Registered Representative, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured; fined \$155,800; ordered to pay \$1,044,732.35 in restitution to public customers, \$26,185.39 jointly and severally with Garvey, and \$48,107.99 jointly and severally with McEnery; ordered to file all sales literature and advertising with NASD's Advertising Regulation Department at least 10 days prior to their first use for one year from the date of acceptance by the National Adjudicatory Council (NAC) of the Letter of Acceptance, Waiver, and Consent (AWC); and ordered to retain an independent consultant

to review and make recommendations concerning the adequacy of the firm's supervisory and operating procedures as they relate to review of advertising and sales literature, books and recordkeeping, corporate debt, municipal securities, and equity transactions, including markups, markdowns, and commissions charged. Kirincic was fined \$25,000 and suspended from association with any NASD member as a Series 24 (General Securities Principal) for 30 days. Dorsey was fined \$15,000 and suspended from association with any NASD member in a principal or supervisory capacity for 20 business days. Garvey was fined \$10,000 and suspended from association with any NASD member in any capacity for 14 days. McEnery was censured and fined \$10,000.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through its employees, participated, directly or indirectly, in undertakings involving the sale of, and interest in, Brady Bonds with a view to the distribution of such securities and acted as underwriters of the securities in violation of Section 5 of the Securities Act of 1933. The findings also stated that the firm, acting through its employees, developed and disseminated to the public advertising materials that failed to disclose material facts regarding the Brady Bonds and included exaggerated, unwarranted, or misleading statements or claims about the Brady Bonds. NASD also found that the firm, acting through its employees, failed to determine markups on the basis of the firm's contemporaneous costs, thereby charging its retail customers fraudulently excessive markups. In addition, NASD found that the firm, acting through Kirincic, failed to establish and maintain an adequate supervisory system in connection with the advertising, sale, and distribution of Brady Bonds. NASD found that written procedures failed to identify how the firm's principals were to review transactions for excessive pricing and markups, when such a review should take place, and how to determine markups if the firm was dominating and controlling the trading of a security. Furthermore, NASD found that the firm, acting through Kirincic, failed to maintain either hard or electronic copies of Brady Bond inventory sheets and discarded the sheets on a daily basis.

NASD found that the firm, through its employees, obtained undisclosed profits in transactions with public customers by taking positions to match customer orders and then executing the customer orders as principal transactions later in the same day, taking the intra-day profits from the transactions for itself. In addition, NASD found that the firm and its employees failed to give public customers best execution on trades when it took "trading profits" and when it executed principal transactions at prices less favorable than the prevailing inter-dealer price at the time of the trade. NASD also found that the firm failed to maintain books and records; failed to maintain trading tickets of customer's transactions; failed to maintain accurate records of the time of receipt of the customer's orders

and the instructions the customer gave in making the orders; failed to make and keep memoranda of each order; failed to mark limit orders and market orders with restrictions and the conditions of each order and trading tickets; failed to accurately record the terms and conditions on the customer's limit orders; and failed to keep identifiable contemporaneous records showing whether an order was a market order or a limit order. Furthermore, NASD found that the firm's records failed to reflect unsolicited orders; that time stamps on orders failed to reflect the time the customer placed the order; that the firm reported transactions before it time-stamped order tickets and executed the transactions before it time-stamped the orders as received; that the firm sent confirmations to public customers that failed to disclose profits the firm received; that the firm treated trades with customers in which it did not take secret profits as riskless principal transactions but provided the customers with confirmations describing them inaccurately as principal transactions; and that, in agency cross trades, the firm sent customers confirmations that failed to disclose the amount of all commission or remuneration and either the name of the person from whom the security was purchased, to whom it was sold, or the fact that such information would be furnished upon request.

NASD also found that the firm reported or confirmed the trades as principal transactions and did not submit either a clearing-only report or a non-tape, non-clearing report in principal trades with public customers in which the firm did not take undisclosed profits; reported trades as principal transactions even though the trades were riskless cross trades; failed to submit or confirm trades with customers to ACT; and reported one transaction more than 90 seconds after execution. In addition, NASD found that the firm failed to establish and maintain supervisory procedures reasonably designed to achieve compliance with federal securities laws and NASD rules relating to interpositioning, front-running, best execution, books and records, and trade reporting requirements. The findings also stated that the firm failed to designate principals with supervisory responsibility for interpositioning and for implementing procedures when front-running was detected. NASD found that Dorsey failed in her supervisory duties in her review of documents and knew, or should have known, that the majority of customer trades involved large undisclosed concessions taken by the firm in addition to commissions, markups, or markdowns, and failed to make reasonable inquiry into the transactions or conduct adequate follow-up.

Furthermore, NASD found that the firm, Garvey, and McEnery charged excessive amounts on principal transactions and failed to take into account factors identified in NASD Rule IM-2440 that should be considered in determining the fairness of charges. Dorsey, as a registered principal, reviewed and approved the amount charged on each of the transactions. Moreover, the firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with NASD

rules relating to charges to customers and failed to reflect how the factors enumerated in NASD Rule IM-2440 should be taken into account. Dorsey, as the registered principal responsible for reviewing and approving the amount charged on transactions, failed to take appropriate action to ensure that the firm's charges to customers were reasonable.

Moreover, NASD found that the firm failed to conduct an annual review of an Office of Supervisory Jurisdiction and failed to report, and to report timely, statistical and summary information regarding written customer complaints pursuant to NASD Rule 3070. In addition, NASD found that the firm, acting through its employees, failed to enforce the firm's procedures relating to its review of corporate debt, municipal transactions, and equity securities transactions. The findings also stated that Kirincic failed to enforce or delegate the responsibility of enforcing the firm's procedures relating to review of equity securities transactions. NASD also found that the firm failed to properly notate whether a sale was "long" or "short" on order memoranda for sell transactions; failed to report properly certain equity security transactions in a timely manner with all correct modifiers; failed to report correctly the price at which transactions were executed; and failed to report transactions reviewed to the Fixed Income Pricing (FIPS) reporting system.

Kirincic's suspension began September 20, 2004, and will conclude at the close of business October 19, 2004. Dorsey's suspension began September 20, 2004, and concluded at the close of business October 15, 2004. Garvey's suspension began September 20, 2004, and concluded October 3, 2004. (NASD Case #CAF040063)

## Firms and Individuals Fined

**American National Municipal Corporation (CRD #44860, Woodland Hills, California) and John Thomas Ford (CRD #2206110, Registered Principal, Fillmore, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Ford consented to the described sanctions and to the entry of findings that the firm, acting through Ford, failed to report timely statistical and summary information concerning customer complaints to NASD pursuant to NASD Rule 3070c. (NASD Case #C02040034)

**Austin Securities, Inc. (CRD #17094, Forest Hills, New York) and Brian Robert Mitchell (CRD #1191608, Registered Principal, Yorktown Heights, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$14,000, jointly and severally. Without admitting or denying the allegations, the firm and Mitchell consented to the described sanctions and to the entry of findings that the firm, acting through Mitchell, permitted an individual to act in a

capacity that required registration while the individual's registration status with NASD was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm, acting through Mitchell, allowed another individual to maintain his registration as a general securities representative through his purported association with the firm when, in fact, he was not actively involved in the firm's securities business or otherwise functioning as a representative of the firm. (NASD Case #C10040094)

**Bossio Financial Group, Inc. (CRD #43970, Wixom, Michigan) and Alan John Bossio (CRD #2502983, Registered Principal, Farmington Hills, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$13,000, jointly and severally, and the firm was fined an additional \$2,500. Without admitting or denying the allegations, the firm and Bossio consented to the described sanctions and to the entry of findings that the firm commenced an offering of 2,000,000 shares of series C convertible preferred stock (Share) through the use of a private placement memorandum. The memorandum represented that the offering was contingent upon the subscription of a minimum number of Shares. The findings also stated that the memorandum further represented that if the condition was not satisfied, none of the Shares would be sold, the investor's funds would be returned without any reduction, and that all subscription funds would be held in a "segregated, interest bearing escrow account" by the firm and "will not be released to the company (or any selling commissions or finder's fees paid) until at least \$500,000 of the Shares are sold." The document further stated that "unless at least \$500,000 of Shares are sold by the Offering Termination Date, all of the investors' funds and interest earned thereon while they were deposited into that escrow account will be returned to them" by the firm. NASD found that the firm sold Shares of the security to members of the public and the customer's funds were deposited into a bank account in the name of the company and the signators on the segregated account were Bossio and another individual.

In addition, NASD determined that the firm, acting through Bossio, permitted the release of \$130,000 before the firm collected \$500,000 from investors. The findings also included that, in connection with the sale of the shares, the firm, acting through Bossio, rendered false and misleading representations in the memorandum and subscription agreement that the purchaser's funds would be held in a segregated, interest-bearing escrow account and would not be released to a company (or any selling commissions or finder's fees paid) until at least \$500,000 of Shares were sold, in that the firm, acting through Bossio, failed to properly escrow purchasers' funds in a segregated account from June 28, 2002 to July 11, 2002, and improperly forwarded the funds to the company prior to the collection of the required minimum purchases. The findings also

stated that the firm used the mails or other means or instrumentalities of interstate commerce to effect transactions in securities, or received and held customer funds or securities, while the firm failed to maintain the minimum required net capital.

Moreover, NASD found that the firm filed with NASD a FOCUS Part IIA Report that was inaccurate in that, among other things, the report overstated the firm's net capital. NASD found that the firm received funds from public customers for the purchase of shares of securities and held the funds in a bank account that was, in part, controlled by Bossio; while pursuant to the membership agreement, the firm agreed that it would not hold customer funds and operate pursuant to the exemptive provisions of SEC Rule 15c3-3(k)(2)(i). The findings stated that the firm, acting through Bossio, received and held customer funds in a bank account while failing to open and use a special reserve bank account for the exclusive benefit of customers that meets the requirements of SEC Rule 15c3-3(f), and failed to compute the member's special reserve requirement pursuant to SEC Rule 15c3-3. (NASD Case #C8A040074)

**Brookstreet Securities Corporation (CRD #14667, Irvine, California) and Stanley Clifton Brooks (CRD #31684, Registered Principal, San Clemente, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. The firm was also required to demonstrate to NASD within 90 days of acceptance of the AWC that it had established procedures for the review and investigation by a designated principal of all information reflected on the Uniform Application for Securities Industry Registration or Transfer (Form U4) submitted by each applicant to the firm for association as a registered or associated person. Without admitting or denying the allegations, the firm and Brooks consented to the described sanctions and to the entry of findings that the firm, acting through Brooks, had sufficient information to raise concerns about whether a registered representative's activities were in compliance with NASD rules pertaining to private securities transactions, but Brooks failed to supervise the representative in a manner reasonably calculated to prevent violation of NASD rules. (NASD Case #C02040031)

**Cardinal Capital Management, Inc., (CRD #24605, Miami, Florida) and Christopher Alan Sweeney (CRD #823375, Registered Principal, Palm City, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$18,500, jointly and severally, of which \$12,500, is jointly and severally with Sweeney. Sweeney was also censured. Without admitting or denying the allegations, the firm and Sweeney consented to the described sanctions and to the entry of findings that the firm failed to maintain correspondence of its registered representatives relating to its investment banking or securities business. NASD also found that the firm, acting through Sweeney, failed to prepare a written needs analysis and

training plan for the calendar year 2000 and further permitted at least two representatives to act in registered capacities while their registrations were inactive due to their failures to satisfy the Regulatory Element of their Continuing Education Requirements. The findings also stated that the firm conducted a securities business while it failed to maintain its required net capital, inaccurately calculated its net capital, maintained inaccurate books and records, and filed inaccurate FOCUS reports. In addition, NASD determined that the firm, acting through Sweeney, filed five quarterly reports in an untimely manner. (NASD Case #C07040073)

**FEA, Inc. (CRD #24376, Northbrook, Illinois) and John Herman Cox (CRD #1944308, Registered Principal, Glenview, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Cox were censured and fined \$12,500, jointly and severally, and the firm was fined an additional \$2,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm used the mails or other means or instrumentalities of interstate commerce to effect transactions in securities, or received and held customer funds or securities while the firm failed to maintain the minimum required net capital. The findings also stated that the firm failed to comply with the terms of its membership agreement when it received funds from public customers for the purchase of interests in securities and held the funds in a bank account controlled by Cox while pursuant to the Membership Agreement, the firm and Cox agreed that it would not hold customer funds and operate pursuant to the exemptive provisions of SEC Rule 15c3-3(k)(2)(i).

NASD also found that the firm, acting through Cox, received and held public customer funds in bank accounts while failing to open and use a special reserve bank account for the exclusive benefit of customers and failed to compute the firm's special reserve requirement pursuant to SEC Rule 15c3-3 as of month-end and withdrawal dates. In addition, NASD determined that the firm commenced an offering of limited partnership interests through the use of private placement memorandum at a price of \$50,000 per unit. The memorandum represented that the offering was contingent upon the number of subscription units by the termination of the offering with the right to extend the offering for an additional 30 days or "all subscriptions received will be promptly refunded to subscribers without interest, charge or deduction". The memorandum further represented that payments received from subscribers would be held in a demand deposit escrow account and would not be commingled with any other funds. NASD found that the firm, acting through Cox, failed to promptly return the subscribers' funds or obtain written reconfirmations of the offerings from the existing subscribers by the due date; such failure rendered the representation in the Memorandum and Subscription Agreement false and misleading. The findings also stated that the firm commenced an offering of securities, through the use of Private



Placement Memorandum at a price of \$50,000 per unit. The memorandum represented that the offering was contingent upon the number of subscription units by the termination of the offering with the right to extend the offering for an additional 30 days, or "all subscriptions received will be promptly refunded to subscribers without interest, charge or deduction." The memorandum further represented that payments received from subscribers would be held in a demand deposit escrow account pending termination of the offering and would not be commingled with any other funds. Moreover, the findings stated that the memorandum represented that the "General Partner and its affiliates reserve the right to purchase units at any time during the offering, and be treated as a Class A Limited Partner. Such purchase may not be for investment, but may be with a view towards resale or distribution of the units so acquired in accordance with applicable law." NASD found that Cox purchased seven units for \$350,000 to achieve the required minimum amount necessary to release the funds and forward the securities. While the memorandum disclosed the fact that Cox could purchase units of securities, it failed to disclose the total amount of units that the general partner and its affiliates could purchase and that the purchases would be for investment, not resale, rendering the Memorandum as false and misleading. (NASD Case #C8A040075)

**Shields and Company (CRD #11053, New York, New York) and John Patrick Hughes, Jr. (CRD #2486574, Registered Representative, Hasbrouck, New Jersey)** submitted an Offer of Settlement in which they were censured and fined \$20,000, jointly and severally. Without admitting or denying the allegations, the firm and Hughes consented to the described sanctions and to the entry of findings that the firm, acting through Hughes, failed to establish and maintain a reasonably designed supervisory system. (NASD Case #C07040064)

## Firms Fined

**Centaurus Financial, Inc. (CRD #30833, Orange, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000, \$5,000 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file timely a report regarding events required to be disclosed pursuant to NASD Rule 3070(b) and a report concerning statistical and summary information relating to customer complaints pursuant to NASD Rule 3070(c). (NASD Case #C02040029)

**Deutsche Bank Securities, Inc. (CRD #2525, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it

incorrectly reported to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) "at-risk" principal transactions in NASDAQ National Market<sup>®</sup> (NNM<sup>®</sup>) securities as non-media with a "riskless principal" capacity. The findings also stated that the firm failed to submit, for the offsetting, a "riskless" portion of "riskless" principal transactions in NNM securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings further stated that the firm failed to report to ACT the correct price for a "riskless principal" transaction. In addition, NASD found that the firm failed to provide written notification disclosing to its customer that the transactions were executed at an average price and incorrectly documented the average price disclosure on three occasions. (NASD Case #CMS040137)

**Donaldson, Lufkin & Jenrette Securities Corp. (CRD #816, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain a supervisory system and written supervisory procedures designed to ensure that a registered representative complied with all applicable securities laws, regulations, and NASD rules in his role as the portfolio manager of a limited partnership. The findings also stated that although several of the firm's principals knew that the representative was managing partnership assets and was soliciting brokerage clients to become investors in the partnership, the firm failed to designate a principal and failed to develop written supervisory procedures for the partnership to supervise the representative's activities. NASD also found that the firm failed to ensure that procedures were in place to review the distribution of quarterly performance reports and written commentary prepared by the representative for the limited partners. (NASD Case #CAF040066)

**First New York Securities, L.L.C. (CRD #16362, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file Large Option Position Reports (LOPRs) with NASD to report positions of conventional option contracts. (NASD Case #CMS040127)

**Garden State Securities, Inc. (CRD #10083, Wall, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not report trades within the required 90 seconds and did not report the trades as late trades utilizing the .SLD modifier. The findings also stated that the firm failed to ensure that the business clocks it utilized for trade reporting purposes were synchronized in

conformity with NASD rules. NASD also found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with ACT reporting rules. (NASD Case #C9B040082)

**Murphy & Durieu (CRD #6292, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$17,500, and required to revise its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning ACT trade reporting within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in OTC equity securities and failed to designate through ACT such last sale reports as late. The findings further stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning ACT trade reporting. (NASD Case #CMS040130)

**National Clearing Corp. (CRD #14343, Beverly Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to file settlement and award disclosures; failed to file a disclosure regarding an internal disciplinary action; and failed to file a settlement disclosure in a timely manner pursuant to NASD Rule 3070(b). The findings also stated that the firm failed to file, and to file timely, quarterly reports concerning statistical and summary information relating to customer complaints pursuant to NASD Rule 3070(c). NASD also found that the firm failed to report accurately to the Municipal Securities Rulemaking Board (MSRB) the correct time of execution regarding reported transactions and failed to report customer transactions to the MSRB. (NASD Case #C02040027)

**Prudential Equity Group, LLC (CRD #7471, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. NASD found that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy or sell for transactions in eligible securities. The findings stated that the firm failed to report to ACT the correct number of shares for transactions in eligible securities and last sale reports of transactions in eligible securities. NASD also found that after a last sale report was submitted for the initial leg or legs of a riskless principal transaction, the firm failed to submit, for the offsetting riskless portion of the transaction, either a clearing only report with a

capacity indicator of "riskless principal", or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings further stated that the firm failed to submit required information to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) and transmitted to OATS reports for transactions involving orders that contained inaccurate, incomplete, or improperly formatted date.

In addition, NASD found that the firm failed to provide written notification disclosing to its customer the firm's correct capacity in the transaction and made available a report on the covered orders in national market system securities that it received for execution from any person. The findings also stated that the report included incomplete and incorrect information in that the firm failed to include an eligible order and a partial execution of an eligible order in its published order execution statistics and the firm failed to publish accurate order execution statistics concerning average effective spreads. Moreover, NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning trade reporting (mixed capacity) and information barriers. NASD also determined that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning the requirements of trade reporting (riskless principal transactions) and information barriers. (NASD Case #CMS040128)

**Sterling Financial Investment Group, Inc. (CRD #41506, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$175,000, and required to retain, within 60 days of acceptance of the AWC, an outside consultant to review and make recommendations concerning the adequacy of the firm's current policies and procedures as they relate to the firm's research department and e-mail retention practices. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it published and distributed a research report on a biopharmaceutical company with a sell/sell short recommendation on the company's common stock that contained substantive errors and other statements that made the report exaggerated, unwarranted, or misleading. The findings also stated that the firm failed to make disclosures required by NASD Rule 2711(h) in a clear and prominent manner. NASD also found that despite the fact the firm had potential errors in the report brought to its attention, it published a "morning note" that repeated errors in the report and failed to disclose in the note that it made a market in the securities at the time the report was published. In addition, NASD found that the firm had no effective system in place to save e-mails or other electronic messages and failed to retain e-mails for three years or for the first two years in an accessible place. Furthermore, the findings stated that although the firm's research department director had been suspended in a principal or supervisory capacity, he

performed acts that were principal or supervisory in nature during his suspension. Moreover, NASD found that the firm had no system or procedures in place to ensure compliance with regulatory suspensions generally or with the director's suspension specifically. (NASD Case #CAF040064)

## Individuals Barred or Suspended

**Marvin Ackerman (CRD #1580808, Registered Representative, Long Beach, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ackerman consented to the described sanction and to the entry of findings that he misused the funds of a public customer in that he accepted checks totaling \$33,845.94 from the customer for investment purposes, deposited the funds into his daughter's bank account without obtaining the products as directed, and failed to use the funds for the benefit of the customer without her knowledge or consent. The findings also stated that Ackerman provided a public customer with a fabricated account statement showing that the customer had purchased \$52,492.04 shares/units of an annuity, when such shares had never been purchased on behalf of the customer. (NASD Case #CLI040022)

**Jonnie Layne Albin (CRD #2213211, Registered Representative, Norfolk, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Albin consented to the described sanction and to the entry of findings that, without the knowledge or consent of the firm, she converted \$90,800 from her member firm. (NASD Case #C04040041)

**Christopher Michael Andreach (CRD #2491323, Registered Representative, Fair Haven, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Andreach consented to the described sanctions and to the entry of findings that he signed the names of trustees on a letter of authorization for the transfer of a 401(K) plan without the knowledge, authorization, or consent of the trustees to an Individual Retirement Account (IRA) account.

Andreach's suspension began September 7, 2004, and concluded at the close of business October 6, 2004. (NASD Case #C9B040081)

**Robert Paul Arnold (CRD #1817656, Registered Representative, East Greenwich, Rhode Island)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Arnold consented

to the described sanction and to the entry of findings that he billed \$44,646 of personal expenses to his corporate credit card without the knowledge or consent of his member firm. (NASD Case #C11040032)

**Thomas Michael Curtis (CRD #2903099, Registered Representative, Marina Del Rey, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$14,412 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Curtis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Curtis consented to the described sanctions and to the entry of findings that he recommended the purchase of Class B mutual fund shares to public customers even though each fund also offered the same mutual fund investment in Class A shares, thereby depriving the customers of discounts on sales charges that they were entitled to receive through commission breakpoints, rights of accumulation, or letters of intent. The findings also stated that the Class B shares were subject to higher annual expenses than Class A shares and were subject to penalties should the customers redeem shares within six years of the purchase. NASD also found that Curtis made recommendations without having a reasonable basis to believe that the transactions were suitable for the customers in light of the nature of the transactions and the facts disclosed by the customers regarding their other securities holdings, financial situation, and needs.

Curtis' suspension began September 20, 2004, and will conclude at the close of business October 19, 2004. (NASD Case #C02040028)

**Eric Darrisaw (CRD #1425377, Registered Principal, Alexandria, Virginia)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any principal capacity for five business days. Without admitting or denying the allegations, Darrisaw consented to the described sanctions and to the entry of findings that he caused his member firm to fail to maintain a continuing and current education program for its registered persons in that the firm failed to evaluate and prioritize its training needs and develop a written training plan. The findings also stated that Darrisaw caused his member firm to fail to keep accurate and current its Form BD and failed to develop and implement a written anti-money laundering program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act and the implementation regulations promulgated thereunder by the Department of the Treasury. NASD also found that Darrisaw caused his member firm to conduct a securities business without a properly qualified and registered FINOP and to file its 2002 annual audited financial report late.

Darrisaw's suspension began October 4, 2004, and concluded at the close of business October 8, 2004. (NASD Case #C07040055)

**Eric Harold Dieffenbach (CRD #1833420, Registered Representative, Littleton, Colorado) and Michel Antoine Rooms (CRD #2187994, Registered Representative, Littleton, Colorado)** were barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Dieffenbach and Rooms violated the Securities and Exchange Commission's (SEC) penny stock rules by failing to disclose required information to customers. The findings also stated that Dieffenbach and Rooms had obstructed NASD's examination and investigation of the penny stock violations.

Rooms appealed this decision to the SEC. Under NASD Rule 9370, bars are not stayed when a matter is appealed to the SEC, unless the SEC orders otherwise. The SEC has not ordered a stay regarding the bar imposed on Rooms. The appeal is pending. (NASD Case #C06020003)

**Richard Andrew Dimare (CRD #4353581, Registered Representative, Las Vegas, Nevada)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Dimare reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dimare consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 to disclose a material fact.

Dimare's suspension began September 20, 2004, and will conclude March 19, 2005. (NASD Case #C02040030)

**John Joseph Donadio (CRD #2924386, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Donadio consented to the described sanction and to the entry of findings that he, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or the mails or any facility of any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or course of business that operated as a fraud or deceit. The findings also stated that Donadio effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent device or contrivance. Specifically, the findings stated that Donadio induced public customers to purchase 3,000 shares

of stock in a company at a price of \$7.10 per share by falsely representing that the company had entered into an agreement to be acquired by another company and that the stock price would double within three to six weeks. The findings also stated Donadio failed to disclose that the company had virtually no assets or earnings and that its auditors had signed a warning in connection with the company's 2000 audit. (NASD Case #C10040064)

**James William Dreos (CRD #802681, Registered Representative, Scottsdale, Arizona)** was fined \$20,000 and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Dreos participated in private securities transactions for which he received compensation but failed to provide written notice to his member firm and failed to obtain written permission from his member firm to participate in the transactions.

Dreos' suspension began September 7, 2004, and will conclude March 6, 2005. (Case #C3A040017)

**Christopher Ryan Fardella (CRD #3028593, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fardella consented to the described sanction and to the entry of findings that he was involved with the sale of promissory notes, the proceeds of which were to be used for the purpose of purchasing and operating a member firm. The findings stated Fardella improperly received \$20,300 of the proceeds as loans. (NASD Case #C9B040084)

**Archie William Foor, III (CRD #1376005, Registered Representative, Yardley, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Foor consented to the described sanctions and to the entry of findings that without the prior knowledge or authorization of public customers, he completed change of broker-dealer forms and new account forms for the customers, signed their names on the forms, and submitted the forms to his new member firm, which acted on the forms believing they were genuine.

Foor's suspension began September 20, 2004, and will conclude December 19, 2004. (NASD Case #C9A040037)

**Robert James Gallegos (CRD #3235311, Registered Representative, Albuquerque, New Mexico)** submitted a Letter of Acceptance, Waiver, and Consent in which he was ordered to pay \$14,000, plus interest, in restitution to a public customer and barred from association with any NASD member in



any capacity. The restitution must be paid before Gallegos requests relief from any statutory disqualification. Without admitting or denying the allegations, Gallegos consented to the described sanctions and to the entry of findings that he obtained the control of, and held in his possession, \$22,500 belonging to a public customer, which he later returned to the customer. The findings also stated that Gallegos obtained and used for his own benefit \$14,000 belonging to a public customer, and that Gallegos failed to respond to NASD requests for information. (NASD Case #C3A040037)

**Rodney Kim Hartman (CRD #1339855, Registered Representative, St. George, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Hartman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hartman consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without written authorization from the customer and without his firm's written acceptance of the account as discretionary.

Hartman's suspension began September 20, 2004, and concluded at the close of business October 1, 2004. (NASD Case #C3A040039)

**John Arthur Isham (CRD #2213222, Registered Representative, Garner, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Isham consented to the described sanction and to the entry of findings that he forged the signatures of public customers on "Amendment of Application and Statement of Health" forms. (NASD Case #C07040068)

**Thomas Michael Keating, Jr. (CRD #736904, Registered Representative, Glendale, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Keating consented to the described sanctions and to the entry of findings that he engaged in outside business activity, for compensation, and failed to provide his member firm with prompt written notice.

Keating's suspension began October 4, 2004, and concluded at the close of business October 15, 2004. (NASD Case #C8A040076)

**Daniel Eric Kelsey (CRD #3031423, Registered Representative, Grand Rapids, Michigan)** was fined \$14,500, suspended from association with any NASD member in any capacity for 60 days, and ordered to requalify by exam as an investment company variable products representative within 60 days of the termination of his suspension. The fine shall become due and payable upon Kelsey's re-entry into the securities business. The sanctions were based on findings that Kelsey made material misrepresentations or omissions to public customers regarding his personal history and the concept of variable life insurance to induce their purchase of variable universal life insurance policies. The findings also stated that Kelsey made negligent misrepresentations to public customers concerning the required premium payments and the withdrawal or deposit of funds to variable life insurance policies. NASD also found that Kelsey failed to timely update his Form U4, filed a false Form U4, and willfully failed to disclose material information on his Form U4.

Kelsey's suspension began August 16, 2004, and concluded at the close of business October 14, 2004. (NASD Case #C8A020088)

**Mohit Anand Khanna (CRD #4156626, Registered Representative, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which Khanna was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Khanna consented to the described sanction and to the entry of findings that he falsely represented to public customers, without his member firm's knowledge or consent, that his firm would refund sales charges when mutual fund shares were sold after the customers had purchased approximately \$1.4 million of mutual fund Class A shares. The findings also stated that after Khanna made these false representations, the customers purchased approximately \$400,000 of additional Class A shares in their accounts. (NASD Case #C02040026)

**Dana Alexander Korosi (CRD #816161, Registered Representative, Moreland Hills, Ohio)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Korosi consented to the described sanction and to the entry of findings that he converted \$188,398 from the securities account of a public customer by writing 60 checks made payable to himself, endorsed the checks and used the proceeds for his own benefit, or for the benefit of someone other than the customer, without the customer's knowledge, consent, or authorization. The findings also stated that Korosi failed to respond to NASD requests for information. (NASD Case #C8A040017)

**Craig Poy Lee (CRD #2680766, Registered Representative, South Elgin, Illinois)** submitted an Offer of Settlement in which he was barred from association with any NASD member firm in any capacity. Without admitting or denying the allegations, Lee consented to the described sanction and to the entry of findings that he participated in private securities transactions, and failed to provide written notice to, or receive approval from, his member firm to participate in these activities. The findings also stated that Lee failed to respond to NASD requests for information. (NASD Case #C8A040065)

**Michael Douglas Lutey (CRD #4718604, Associated Person, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Lutey reassociates with any NASD member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lutey consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

Lutey's suspension began September 20, 2004, and will conclude at the close of business November 3, 2004. (NASD Case #C06040028)

**Steven Paul Mednick (CRD #1386095, Registered Representative, East Northport, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$9,500, ordered to disgorge \$1,418, plus interest, in partial restitution to a public customer, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Mednick consented to the described sanctions and to the entry of findings that he recommended that public customers purchase municipal bonds primarily based on statements by his member firm and failed to perform his own independent research or investigation relating to the bonds. The findings also stated that Mednick did not have reasonable grounds for believing that his recommendations and resultant transactions were suitable for the financial situation, investment objectives, and needs of the customers.

Mednick's suspension began September 20, 2004, and concluded at the close of business October 1, 2004. (NASD Case #C10040093)

**Philip David Menard (CRD #1796404, Registered Representative, Germantown, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Menard consented to the described sanction and to the entry of findings that he signed names of public customers to applications for variable annuities without the customers' knowledge or consent.

The findings also stated that Menard then submitted each application to his member firm for approval and issuance by the insurance company. (NASD Case #C02040024)

**James Gary Morgan, Jr. (CRD #2976626, Registered Representative, Denton, Texas)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and required to pay \$29,000, plus interest, in restitution to public customers. Without admitting or denying the allegations, Morgan consented to the described sanctions and to the entry of findings that he fraudulently sold unsuitable securities to a public customer. The findings also stated that Morgan lied to NASD under oath during on-the-record testimony, and that he failed to amend his Form U4 to disclose material information. (NASD Case #CMS040048)

**Bernard Edward Nugent, Jr. (CRD #1209387, Registered Principal, Yarmouthport, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Nugent consented to the described sanctions and to the entry of findings that he recommended that a public customer liquidate approximately \$317,000 in mutual fund shares and purchase a variable annuity without having a reasonable basis for believing that the recommendation was suitable based on his client's investment objectives, financial situation, and needs.

Nugent's suspension began October 4, 2004, and will conclude at the close of business December 3, 2004. (NASD Case #C11040031)

**Daniel John O'Brien (CRD #1919816, Registered Representative, Missouri City, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, O'Brien consented to the described sanctions and to the entry of findings that he engaged in outside business activities by receiving \$46,447 in compensation for selling fixed annuities to public customers. The findings also stated that O'Brien failed and neglected to give prompt written notice of these activities to his member firm.

O'Brien's suspension began September 20, 2004, and concluded at the close of business October 1, 2004. (NASD Case #C8A040073)

**Carlos Julio Penalosa (CRD #2187279, Registered Principal, Coral Gables, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, and suspended from association with any NASD member in a principal capacity for 30 business days. Without admitting or denying the allegations, Penalosa consented to the described

sanctions and to the entry of findings that he permitted another individual of his member firm to act in the capacity of a general securities representative by effecting securities transactions without being registered as a general securities representative and to act in the capacity of a general securities principal by acting as a branch manager without being registered as a general securities principal.

Penaloza's suspension began September 20, 2004, and will conclude at the close of business October 29, 2004. (NASD Case #C10040091)

**Michael A. Quinones (CRD #3027561, Associated Person, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that he willfully failed to disclose material information on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C10030113)

**Christopher Michael Reno (CRD #2128187, Registered Representative, Staten Island, New York)** was barred from association with any member in any capacity. The sanction was based on findings that Reno failed to respond to NASD requests for information. The findings also stated that Reno engaged in unauthorized purchase transactions in the accounts of public customers without prior authorization or consent of the customers. (NASD Case #C9B040004)

**Ileana Rodriguez (CRD #2834408, Registered Representative, Miami, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rodriguez consented to the described sanction and to the entry of findings that she misrepresented material information to a public customer in a written investment proposal. The findings also stated that Rodriguez failed to respond to NASD requests for information. (NASD Case #C07040070)

**Charles Anthony Sacco (CRD #2762595, Registered Representative, Medford, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Sacco, no monetary sanction has been imposed. Without admitting or denying the allegations, Sacco consented to the described sanctions and to the entry of findings that he maintained relationships with certain clients, including hedge funds, that engaged in the "market timing" of mutual funds. The findings also stated that Sacco established a number of accounts for each of his market-timing customers and obtained various consultant numbers from his member firm to maximize for each customer the number of exchanges permitted by the mutual fund complexes before the customers' trading was blocked by the mutual fund complexes. NASD also found that Sacco established another financial

consultant number using his and another person's initials to resume trading at a particular mutual fund complex and avoid restrictions placed on his trading activities.

Sacco's suspension began September 20, 2004, and will conclude at the close of business September 19, 2005. (NASD Case #C11040033)

**Lucas Charles Schell (CRD #4290983, Registered Representative, Coeur d'Alene, Idaho)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Schell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schell consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer to an Application for Policy Change/Reinstatement directed to an insurance company to reinstate the customer's life insurance policy without the authorization or consent of the customer.

Schell's suspension began September 20, 2004, and will conclude March 19, 2005. (NASD Case #C3B040023)

**Edward Lee Sensor (CRD #1969463, Registered Principal, Sterling Illinois)** was barred from association with any NASD member firm in any capacity. The sanction was based on findings that Sensor failed to respond to NASD requests for information. The findings also stated that Sensor engaged in private securities transactions without giving prior written notice to, or obtaining prior written approval from, his member firm. NASD also found that Sensor engaged in an outside business activity without providing prompt written notice to his member firm. (NASD Case #C8A040010)

**Wayne Davis Shook (CRD #2837213, Registered Representative, Old Orchard Beach, Maine)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Shook, no monetary sanction was imposed. Without admitting or denying the allegations, Shook consented to the described sanction and to the entry of findings that he executed transactions in the account of a public customer without reasonable grounds for believing that the level of activity represented by such transactions was suitable for the customer on the basis of her financial condition, investment, objectives, and needs. The findings also stated that Shook exercised effective control over the customer's account, engaging in trading activity that was excessive in size and frequency, trading on margin in the customer's account, and effecting purchases in the account costing approximately \$191,178 that corresponded to an annualized turnover rate of approximately 12 times.

Shook's suspension began September 20, 2004, and will conclude at the close of business September 19, 2005. (NASD Case #C8A040047)

**Rick Christopher Siskey (CRD #1463173, Registered Representative, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Siskey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Siskey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide sufficient prior written notice to his member firm.

Siskey's suspension began September 20, 2004, and will conclude at the close of business September 19, 2006. (NASD Case #C07040075)

**Leon Harry Strohecker, III (CRD #2829676, Registered Representative, Whitmore Lake, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Strohecker consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. (NASD Case #C9A040036)

**Jan Miguel Tapia (CRD #1047359, Registered Principal, Staten Island, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tapia consented to the described sanction and to the entry of findings that he received a \$100,000 check from a public customer for investment purposes and did not deposit or apply the funds as instructed. NASD also found that Tapia wired, or caused to be wired, \$98,128.08 from a public customer's securities account to accounts in which Tapia and/or his wife had beneficial interest using false letters of authorization to effect the transfers without the knowledge, authorization, or consent of the customer. The findings also stated that Tapia failed to respond to NASD requests for information. (NASD Case #C10040047)

**Stephen Nicholas Thomas (CRD #3236045, Registered Representative, Queens, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Thomas made improper use of public customer funds. (NASD Case #C10030082)

**Ronald James Turner (CRD #2735639, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, Turner consented to the described sanction and to the entry of findings that he made improper use of proceeds from the sale of promissory notes. The findings also stated that Turner failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C9B040083)

**Brian Michael Uhelski (CRD #2807010, Registered Principal, Mason, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Uhelski consented to the described sanction and to the entry of findings that he participated in outside business activities without providing prompt written notice to his member firm. (NASD Case #C8A040077)

**Karen Taxacher Wardlaw (CRD #800300, Registered Representative, Plantation, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wardlaw consented to the described sanction and to the entry of findings that she failed to respond to an NASD request for information. (NASD Case #C07040076)

**Ronald Dean Wightman (CRD #466601, Registered Principal, Salt Lake City, Utah)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any supervisory capacity for 30 days. Without admitting or denying the allegations, Wightman consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative in a manner reasonably designed to achieve compliance with NASD Rule 3040.

Wightman's suspension began October 4, 2004, and will conclude at the close of business November 2, 2004. (NASD Case #C02040016)

## Decisions Issued

The District Business Conduct Committee (DBCC) or the OHO have issued the following and have been appealed to or called for review by the NAC as of September 3, 2004. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Herbert Ivan Kay (CRD #1374570, Registered Principal, Tucson, Arizona)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Kay participated in private securities transactions without prior written notice to, or approval from, his member firm to participate in the transactions.



Kay appealed the Hearing Panel decision to the NAC, but subsequently withdrew his appeal. A member of the NAC or the Review Subcommittee has 45 days from the date of receipt of the notice of withdrawal to call the decision for review. The sanction is not in effect pending consideration of the decision. (NASD Case #C3A030015)

**Richard Leon Newberg (CRD #346857, Registered Principal, Golden Beach, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Newberg provided false testimony during an NASD hearing.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #CAF030013)

**Andrew Paul Schneider (CRD #2907279, Registered Representative, West Palm Beach, Florida)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The sanctions were based on findings that Schneider, who at the time was a registered representative and an equity trader, engaged in outside business activity without providing his member firm with prompt written notice.

This decision has been appealed by the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10030088)

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Dana Niles Frankfort (CRD #2243930, Registered Representative, Marina Del Rey, California)** was named as a respondent in an NASD complaint alleging that he instructed an individual to authorize and pay the full amount of a limited partner's initial investment in a limited partnership without regard to the net profit or loss or the relative value of the partner's account, resulting in the account being reduced to a \$0 balance and constituting a re-purchase by the limited partnership of the individual's partnership interest in contravention of the representations in the private placement memorandum. The complaint also alleges that this payment caused the remaining limited partners to suffer losses in the value of their interests unrelated to market returns, and Frankfort failed to notify the

other partners that the partnership had re-purchased the interest of the one individual and that the partnership had suffered significant market losses since its inception.

In addition, the complaint alleges that Frankfort, in connection with the sale of limited partnership interests and with the purchase of one customer's limited partnership interest, with scienter, directly or indirectly, by the use of means or instrumentalities of interstate commerce or of the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements true, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit upon purchasers or prospective purchasers. Furthermore, the complaint alleges that Frankfort made recommendations to public customers to purchase limited partnership interests without a reasonable basis and failed to conduct due diligence prior to making the recommendations. Moreover, the complaint alleges that Frankfort made the recommendations when he knew, or should have known, that the fund manager had no prior experience in managing investment funds for the benefit of public customers and made the recommendations without having reasonable grounds for believing the recommendations and resultant transactions were suitable for the customers on the basis of their financial situation and needs. The complaint also alleges that Frankfort participated in private securities transactions without prior written notification to, and written approval from, his member firm. (NASD Case #C02040032)

**Dupont Securities Group, Inc. (CRD #42305, New York, New York) and David Wayne Parsons (CRD #2963654, Registered Principal, New York, New York)** were named as respondents in an NASD complaint alleging that the firm and Parsons engaged in unlawful sales of unregistered shares of a common stock of the publicly traded parent company of the firm because there was no registration statement filed or in effect pursuant to Section 5 of the Securities Act of 1933. The complaint also alleges that the firm issued press releases that were materially false and misleading and Parsons knew or was reckless in not knowing that the press releases and other communications were false and misleading but allowed the information to be disseminated to the public. In addition, the complaint alleges that the issuance of the false and misleading press releases and other conduct by the firm were intended to, and did, artificially inflate the price of the common stock, thereby defrauding investors. Furthermore, the complaint alleges that Parsons willfully misrepresented on his Form U4 that his authorization to act as an attorney had never been revoked or suspended when, in fact, it had been and provided legal advice with respect to securities transactions when he was not licensed to practice law. Moreover, the complaint alleges that during sworn testimony, Parsons refused to answer questions based on assertions of

attorney-client privilege that were false because he could not lawfully assert such a privilege as he was not licensed to practice law in any state. (NASD Case #CAF040068)

**Samuel Davis Hughes (CRD #1928041, Registered Representative, Panama City, Florida)** was named as a respondent in an NASD complaint alleging that he recommended and effected transactions in the accounts of public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers based on the customers' financial situations, investment objectives, and needs. In addition, the complaint alleges that Hughes failed to disclose to a customer that surrender charges would be assessed for sales and misrepresented that a customer would receive a bonus payment for annuity purchases. The complaint also alleges that Hughes reallocated a public customer's funds without the customer's knowledge or authorization and failed to respond to NASD requests to appear for testimony. (NASD Case #C07040067)

**Jayne Alexander Kurtyka (CRD #1171623, Registered Representative, W. Chicago, Illinois)** was named as a respondent in an NASD complaint alleging that he recommended and effected securities transactions in the account of a public customer, including purchasing securities on margin, without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customer based upon the customer's age, total net worth, liquid net worth, investment experience, financial situation, and investment objectives. The complaint also alleges that Kurtyka exercised discretion in the account of a public customer without obtaining written authorization from the customer and written acceptance of the account as discretionary by his member firm. In addition, the complaint alleges that Kurtyka prepared and mailed, or caused to be prepared and mailed, a form letter considered by NASD to be sales literature that was not fair and balanced and omitted material facts or qualification, causing the form letter to be misleading or containing exaggerated, unwarranted, or misleading statements or claims. The complaint further alleges that the form letter failed to provide a fair and balanced presentation in that it failed to disclose the material differences between the general nature of the fund's portfolio and securities indexes against which it was compared. (NASD Case #CAF040067)

**Sterling Scott Lee (CRD #1848950, Registered Principal, Austin, Texas)** and **Dennis Todd Lloyd Gordon (CRD #1614614, Registered Principal, Houston, Texas)** were named as respondents in an NASD complaint alleging that they permitted an individual to function as an unregistered principal of a member firm for over three years. The complaint also alleges that Lee and Gordon knew, or should have known, that the individual was not registered in any capacity. The complaint further alleges that Lee and Gordon, acting on behalf of their

member firm, charged its customers prices for an equity security that were not fair and reasonable based on all relevant circumstances, including market conditions with respect to such security at the time of the transactions, the expenses involved, and the fact that his firm was entitled to a profit. They also failed to disclose the mark-ups on customer confirmation statements. (NASD Case #C06040027)

**Rick Lee Matney (CRD #1828590, Registered Representative, Marshalltown, Iowa)** was named as a respondent in an NASD complaint alleging that he received a check totaling \$2,018.80 from a public customer to cover property and casualty insurance on certain properties. The complaint alleges that Matney discovered that his insurance company would not underwrite the insurance that Matney had verbally committed to in his conversation with the customer, did not relay this information to the customer, and applied the \$2,018.80 check to premiums for existing insurance policies held by the customer. The complaint also alleges that the customer requested details on the property and casualty insurance that she had purchased through Matney, including the cost and coverage amounts of each policy, and Matney created insurance declarations pages for property and casualty insurance purportedly underwritten by his insurance company. However, the property and casualty insurance reflected in the declarations pages was not underwritten by his insurance company. In addition, the complaint alleges that Matney fabricated this information to satisfy the customer's request. (NASD Case #C04040036)

**Anthony Stephen McComas (CRD #708707, Registered Representative, Guaynabo, Puerto Rico)** was named as a respondent in an NASD complaint alleging that he caused \$466,827 in checks to be issued from a public customer's securities account, which he deposited into a bank account that he controlled without the knowledge or authorization of the customer. The complaint also alleges that McComas failed to respond to NASD requests for information. (NASD Case #C07040072)

**Jamie Patrick McNamara (CRD #4546647, Registered Representative, Lees Summit, Missouri)** was named as a respondent in an NASD complaint alleging that he received a \$388 money order from a public customer payable to his member firm to obtain automobile insurance coverage. The complaint alleges that McNamara deposited the funds into a personal d/b/a account and did not purchase the automobile insurance coverage for the customer as requested. The complaint also alleges that the customer requested details on the automobile coverage that she had requested and believed she had purchased, and McNamara created a fictitious automobile insurance card and provided it to the customer. In addition, the complaint alleges that McNamara failed to respond to NASD requests for information. (NASD Case #C04040040)

Nicholas Harrel Patton, Jr. (CRD #1545508, Registered Supervisor, Little Rock, Arizona) was named as a respondent in an NASD complaint alleging that Patton received checks totaling \$27,214.25 from public customers to invest in securities. The complaint alleges that Patton failed and neglected to remit these funds to his member firm, and, instead, deposited the checks into his personal bank checking account without the customers' knowledge or consent, thereby converting the customers' funds. The complaint also alleges that Patton failed to respond to NASD requests for information. (NASD Case #C05040063)

Rick James Settles (CRD #1559298, Registered Principal, Louisville, Kentucky) was named as a respondent in an NASD complaint alleging that Settles recommended and effected purchase and sales transactions in the accounts of public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers on the basis of their financial situations and needs. The complaint also alleges that Settles exercised discretionary authority in the accounts of public customers without having obtained prior written acceptance of the accounts as discretionary by his member firm. (NASD Case #C05040062)

### **Firms Suspended for Failure to Supply Financial Information**

The following firms were suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Coastal Financial Security, Incorporated**  
Orangeburg, New York  
(September 7, 2004)

**ICG Securities Ltd.**  
San Francisco, California  
(September 7, 2004)

**Investment Reseached Plans, Inc.**  
Los Angeles, California  
(September 7, 2004)

**Joseph Wrobel**  
Las Vegas, Nevada  
(September 7, 2004)

**WM B. Austin & Associates**  
Moulins, France  
(September 7, 2004)

### **Firms Suspended Pursuant to NASD Rule 9553 for Failure to Pay Fees Resulting from Arbitration Proceedings**

**Barry Murphy & Company, Inc.**  
Boston, Massachusetts  
(September 15, 2004)

**Chapman Securities, Inc.**  
Wichita, Kansas  
(August 30, 2004)

**Hanmi Securities, Inc.**  
Los Angeles, California  
(September 15, 2004)

### **Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested Under NASD Rule 8210**

(The date the bar became effective is listed after the entry.)

**Clancy, William James**  
Rahway, New Jersey  
(September 13, 2004)

**Dhillon, Hardip S.**  
Fremont, California  
(September 13, 2004)

**Flor, Gary J.**  
Huntington, New York  
(September 14, 2004)

**Gardner, Walter R.**  
Little Rock, Arkansas  
(September 8, 2004)

**Hsieh, Tu-Chih**  
Ridgefield, New Jersey  
(September 14, 2004)

**Jacks, Gary M.**  
Maineville, Ohio  
(September 9, 2004)

**Leonardi, Carl D.**  
Rochester, New York  
(August 23, 2004)

### **Individuals Suspended Pursuant to NASD Rule 9552 for Failure to Provide Information Requested Under NASD Rule 8210**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Hollander, Richard S.**  
Boca Raton, Florida  
(August 23, 2004)

**Pope, Michael**  
Pittsburgh, Pennsylvania  
(August 23, 2004)

### **Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement**

**Head, Thomas M.**  
Palm Desert, California  
(September 15, 2004)

**Weaver, Kevin M.**  
Edwards, Colorado  
(August 3, 2004)

### **NASD Fines Sentinel Financial Services \$700,000 for Failing to Prevent Market Timing**

#### ***Supervisory Inadequacies Cited; Over \$650,000 in Restitution Paid to Affected Funds***

NASD censured and fined Sentinel Financial Services Company, of Montpelier, Vermont, \$700,000 for failing to prevent market timing in three mutual funds offered by its affiliate, Sentinel Group Funds, Inc. Sentinel also failed to establish and maintain a reasonable supervisory system designed to detect and prevent market timing in violation of the funds' trading policies.

"As the distributor for a family of mutual funds, Sentinel was uniquely situated to enforce prospectus limits and fund policies designed to limit market timing, which can dilute the value of fund shares, raise transaction costs and thus harm other fund shareholders," said NASD Vice Chairman Mary L. Schapiro. "But the absence of effective supervisory systems enabled certain shareholders to engage in impermissible market timing for years."

After NASD completed its investigation, Sentinel paid \$659,674 in restitution to the three affected funds—Sentinel International Equity Fund (\$645,631), Sentinel Bond Fund (\$10,098) and Sentinel High Yield Bond Fund (\$3,945).

NASD found that despite Sentinel's adoption of an "Excessive Trading Policy" in October 2000—specifically designed to monitor and restrict market timing—Sentinel's inadequate supervisory system enabled some customers of broker-dealers to continue to trade shares of Sentinel mutual funds more frequently than the policy and fund prospectuses allowed.

Sentinel's supervisory procedures and systems were not sufficient to detect and prevent market timing and excessive mutual fund exchanges, and lacked sufficient checks and balances. Sentinel left primary review of the firm's excessive trading surveillance data and reports to its wholesalers and non-compliance personnel, and relied on those individuals to monitor and prevent excessive trading in the funds.

NASD's investigation, which covered the period from October 2000 to October 2003, found that Sentinel could only detect market timing after customers had already engaged in excessive transactions. Even after Sentinel restricted their accounts, some customers were able to establish new accounts and continue trading in Sentinel mutual funds. Sentinel also did not have an effective system to monitor fund exchange activity by accounts under common ownership.

NASD also found that prior to adopting its Excessive Trading Policy in October 2000, Sentinel had entered into understandings with two brokers permitting them to engage in limited market timing of Sentinel funds. Sentinel not only allowed the two brokers to continue their market timing activities after the new policy was adopted, but was unable to enforce the trading limitations spelled out in those understandings.

During its investigation, NASD also found that Sentinel failed to maintain and preserve internal e-mail communications relating to the firm's business as required by the federal securities laws and NASD rules. For example, the firm failed to retain all e-mails that were deleted by its registered employees.

In addition to fining the firm and requiring restitution, NASD required Sentinel to certify that it has disclosed all instances of fund trading that was inconsistent with the fund prospectuses and Sentinel's Excessive Trading Policy, and that it has implemented appropriate systems and controls with respect to market timing.

In settling this matter, Sentinel neither admitted nor denied the charges.



## **NASD Charges David Lerner Associates with Using Misleading Radio Spots, Investment Seminars, Other Ads**

### ***Firm President David Lerner, Senior VP, and Affiliated Firm also Charged***

NASD charged David Lerner Associates, Inc., of Syosset, New York and its president, David Lerner, with violating NASD advertising rules through its advertising, investment seminars, and other communications with the public. Also charged were John Dempsey, the firm's Senior Vice President of Sales, and SSH Securities, Inc., an affiliate of David Lerner Associates that is controlled by David Lerner.

According to the complaint, between May 2001 and May 2003, David Lerner and the firm used radio advertisements, investment seminars, and other communications that contained numerous statements and claims that were misleading, exaggerated, or unwarranted.

The firm advertised heavily on New York metropolitan area radio stations with 60-second spots that ran several days a week, frequently throughout the day. The firm's expenditures on advertising and marketing were equivalent to 17 percent of its total 2002 total revenue of \$12 million, with the vast majority of the expenditures going to radio advertisements. Lerner developed the ideas for the radio advertisements and narrated all of the radio spots as the "voice" of the firm. A recurring theme of the ads was the concept of "providing returns of 10 percent and more" to "tens of thousands" of customers. Among the claims made in the radio ads:

"For 25 years, we at David Lerner Associates have provided tens of thousands of people with investments that even in these turbulent times, continue to pay over 10%."

"We are currently providing returns of 10% and more in investments that have nothing to do with the stock market."

"In spite of the gyrations of the stock market, our clients continue to enjoy high dividend returns - in many cases 10% and more."

NASD charged that these statements, which the firm could not support, were exaggerated, unwarranted, or misleading. In addition, some ads contained stories about individuals Lerner allegedly had met, suggesting the person's investments would have performed better had the person invested with the firm or followed the firm's investment philosophy. The firm, however, could not provide support that the incidents described actually occurred.

"Exaggerated and misleading claims of investment returns violate NASD rules designed to protect the public," said NASD Vice Chairman Mary L. Schapiro. "In this case, the firm's unjustified suggestion of consistent 10 percent investment returns over a period of years, together with its use of statements designed to appear as customer testimonials, is misleading and an abuse of the investing public."

The firm's advertisements also suggested that individuals who invested with David Lerner Associates would retain the value of their assets regardless of market conditions, or would regain prior losses sustained in the stock market. For instance, the advertisements stated:

"While past performance can never be a guarantee of future results, we at David Lerner Associates are proud and pleased that for 26 years, tens of thousands of our investors have been receiving high income and solid returns regardless of whether interest rates or the stock market went up or down."

"As a result of our conservative investment philosophy, tens of thousands of investors have been spared the agony of the financial markets, and every day new investors are coming to David Lerner Associates to repair the damage."

NASD charged that these statements were also exaggerated or misleading and improperly implied guarantees.

Investment seminars were also important to the firm's marketing efforts. During the relevant period, the firm conducted approximately 70 to 80 seminars for the public, with Lerner appearing as the principal speaker at each seminar. Lerner's PowerPoint presentations contained statements and claims similar to those made in the radio advertisements. As with the radio ads, the firm did not have factual support for many of the claims and also omitted to disclose important information.

Finally, SSH Securities prepared, and David Lerner Associates distributed, fact sheets concerning Spirit of America mutual funds that NASD charged contained inaccurate information. Specifically, the fact sheets' listings of the top ten holdings of the Spirit of America funds were inaccurate at the time the sheets were distributed. In addition, the material compared the funds' performance with that of the S&P 500 and the Dow Jones Industrials without explaining the many differences between the Spirit of America funds, which were comprised of publicly traded real estate investment trusts (REITs), and those broad stock market indices.

NASD also charged Dempsey, the principal of David Lerner Associates responsible for approving advertisements, with failing to discharge his supervisory responsibilities. Dempsey violated NASD rules by approving the misleading radio ads as well as by failing to review and approve the other advertising cited in the NASD's complaint.

Under NASD rules, the respondents named in the complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from NASD.

### **NASD Hearing Panel Dismisses Complaint against Win Capital, Two Officers**

An NASD Hearing Panel dismissed a June 2003 complaint charging Win Capital Corp. of Long Island, NY and two of its officers with securities fraud in connection with a hedge fund offering.

NASD's Enforcement Department had charged Win Capital, acting through then-Chairman Steven J. Bayern and then-President Patrick M. Kolenick, with failing to disclose certain material facts to investors in a hedge fund the two men had formed. They raised approximately \$1 million by selling limited partnership interests in the hedge fund to 12 investors.

At issue in the hearing was Bayern's and Kolenik's failure to disclose to those investors that of the approximately \$1 million raised, \$700,000 was used to provide a loan to a business colleague. The hearing panel concluded that NASD Enforcement had failed to prove that the disclosure omissions were material. The panel also found no evidence that the respondents intended to deceive investors.

### **NASD Sanctions 18 Firms for OATS Reporting and Supervision Violations**

#### ***Total Fines Over \$1.2 Million; SG Cowen Ordered to Pay \$800,000***

NASD censured and imposed fines totaling more than \$1.2 million on 18 firms for violations relating to NASD's OATS rules and supervision. The largest single action was against SG Cowen, LLC of New York, NY, which was censured and fined \$800,000 for failing to report millions of orders over a four-year period.

"The enforcement actions announced today are against a wide range of firms for violations such as missing reports, inaccurate data, and failure to correct data after it had been rejected," said NASD Vice Chairman Mary L. Schapiro. "These actions are part of NASD's ongoing efforts to ensure that the audit trail is complete and accurate. The information reported to OATS enables NASD to recreate the life cycle of an order, substantially enhancing the NASDAQ audit trail and ensuring NASD's ability to conduct effective market surveillance."

Compliance with OATS rules is critical to NASD's regulation of The Nasdaq Stock Market, Inc. Firms are required by OATS rules to report specific data elements related to the handling and execution of customer orders and certain proprietary orders for NASDAQ securities, and to synchronize their business clocks as required by NASD.

Regarding SG Cowen, NASD found that the firm failed to report OATS data for approximately 50 million orders received by the firm's equity derivatives desk between October 1999 and March 2004. The firm developed a system for capturing and reporting OATS data for its equity derivatives desk in 1999. But after operational changes to that system were implemented shortly after the firm began OATS reporting, data generated for the equity derivatives desk was never forwarded to NASD, even though other trading desks at the firm were regularly submitting voluminous OATS reports.

Because Cowen did not have an adequate supervisory system, the firm did not discover the problem until late 2003—four years later. Once it did discover the problem, the firm investigated its source and scope, and reported its findings to NASD in May 2004. The fine against Cowen consists of \$500,000 for inadequate supervision and \$300,000 for OATS violations. The sanctions against Cowen reflect the extensive failure to report OATS data, the inadequate supervision, the firm's significant disciplinary history, and a substantial credit for investigating the matter and bringing it to NASD's attention.

The fines imposed total \$1,219,000 and involve the following firms:

- ♦ **Spear, Leeds & Kellogg, L.P.** – censure and a \$75,000 fine for late OATS reporting on its own behalf and on behalf of reporting members, and failing to correct or replace rejected OATS reports on its own behalf and on behalf of reporting members.
- ♦ **Schwab Capital Markets, L.P.** – censure and a \$70,000 fine for failing to correct or replace rejected OATS reports, submitting inaccurate OATS data, and supervisory deficiencies concerning OATS compliance.
- ♦ **Credit Suisse First Boston, L.L.C.** – censure and a \$50,000 fine for late OATS reporting, failing to correct or replace rejected OATS reports, and submitting inaccurate OATS data.
- ♦ **Carlin Equities Corporation** – censure and a \$35,000 fine for late OATS reporting, failing to correct or replace rejected OATS reports, submitting inaccurate and/or incomplete OATS data, and supervisory deficiencies concerning OATS compliance.

- ◆ **FutureTrade Securities, L.L.C.** – censure and a \$35,000 fine for failing to correct or replace rejected OATS reports, submitting inaccurate OATS data and supervisory deficiencies concerning OATS compliance.
- ◆ **Pulse Trading, Inc.** – censure and a \$20,000 fine for failing to submit required OATS data, late OATS reporting, and supervisory deficiencies concerning OATS compliance.
- ◆ **Scottrade, Inc.** – censure and a \$16,000 fine for failing to correct or replace rejected OATS reports and supervisory deficiencies concerning OATS compliance.
- ◆ **Delta Asset Management Company, L.L.C.** – censure and a \$15,000 fine for failing to submit required OATS data, late OATS reporting and supervisory deficiencies concerning OATS compliance.
- ◆ **Deutsche Bank Securities, Inc.** – censure and a \$15,000 fine for late OATS reporting and supervisory deficiencies concerning OATS compliance.
- ◆ **Doyle, Miles & Co., L.L.C.** – censure and a \$12,500 fine for late OATS reporting and supervisory deficiencies concerning OATS compliance.
- ◆ **Quantlab Securities, L.P.** – censure and a \$12,500 fine for failing to report OATS data and supervisory deficiencies concerning OATS compliance.
- ◆ **BNY Brokerage, Inc.** – censure and a \$12,000 fine for failing to correct or replace rejected OATS reports and supervisory deficiencies concerning OATS compliance.
- ◆ **Index Securities, LLC** – censure and an \$11,000 fine for failing to correct or replace rejected OATS reports and supervisory deficiencies concerning OATS compliance.
- ◆ **Mid-Atlantic Capital Corporation** – censure and a \$10,000 fine for late OATS reporting and supervisory deficiencies concerning OATS compliance.
- ◆ **Options Trading Associates, LLC** – censure and a \$10,000 fine for improperly formatted OATS data and supervisory deficiencies concerning OATS compliance.
- ◆ **Transcend Capital, LP** – censure and a \$10,000 fine for late OATS reporting and failing to submit required OATS data.

- ◆ **UBS Securities, L.L.C.** – censure and a \$10,000 fine for submitting inaccurate and/or incomplete OATS data.

In concluding these settlements, the firms neither admitted nor denied the charges.

### **Deutsche Bank Securities Inc. and Thomas Weisel Partners LLC Settle Enforcement Actions Involving Conflicts of Interest between Research and Investment Banking**

#### ***Deutsche Bank Securities to Pay \$87.5 Million, Including Penalty of \$7.5 Million for Failing to Timely Produce All E-mail; Thomas Weisel Partners to Pay \$12.5 Million***

The Securities and Exchange Commission, the North American Securities Administrators Association (NASAA), NASD, Inc., New York Stock Exchange (NYSE), and state securities regulators, including California's Department of Corporations, announced enforcement actions against Deutsche Bank Securities Inc. and Thomas Weisel Partners LLC. These settlements are related to the April 2003 Global Settlement that ten other investment banks reached with the SEC, state securities regulators, NASD, and NYSE following investigations of allegations that investment banking interests had undue influence on securities research at brokerage firms. The enforcement actions against Deutsche Bank Securities and Thomas Weisel Partners, together with the Global Settlement announced last year, are part of a comprehensive regulatory effort to reform the relationship between investment banking and research and to improve industry practices relating to fundamental research.

#### ***Terms of the Settlement: Penalties, Disgorgement, Funds for Independent Research and Investor Education, Reforms, and Injunctions***

Deutsche Bank Securities will pay a total of \$87.5 million: \$25 million in disgorgement, \$25 million as a penalty for various conflicts of interest, \$25 million to fund independent research, \$5 million to fund and promote investor education, and \$7.5 million for failing to promptly produce all e-mail and thereby delaying by over a year the investigation as to Deutsche Bank Securities. Thomas Weisel Partners will pay a total of \$12.5 million: \$5 million in disgorgement, \$5 million as a penalty for various conflicts of interest, and \$2.5 million to fund independent research. Under the settlements, half of the disgorgement and penalty amounts will be paid by the firms in resolution of actions brought by the SEC, NYSE, and NASD, and will be put into funds to benefit customers of the firms. The remainder of the disgorgement and penalty amounts will be paid to the state securities regulators.

With respect to Deutsche Bank Securities' \$5 million for investor education, the SEC, NYSE, and NASD have authorized that \$2.5 million of these funds be added to the Investor Education Fund that the Court approved in the Global Settlement. The Investor Education Fund will, through the creation of an Investor Education Foundation, develop and support programs designed to equip investors with the knowledge and skills necessary to make informed decisions. The remaining \$2.5 million will be paid to state securities regulators and will be used for investor education purposes.

In addition to the monetary payments, Deutsche Bank Securities and Thomas Weisel Partners are required to comply with significant requirements that will dramatically reform their practices, including separating the research and investment banking departments at the firms, restructuring how research is reviewed and supervised, prohibiting analysts from receiving compensation for investment banking activities, and making independent research available to investors. These changes are consistent with those imposed against the ten firms in the Global Settlement.

Under the terms of the settlement, an injunction will be entered against each firm, enjoining it from violating the statutes and rules that it is alleged to have violated. The firms also have entered into the voluntary agreement restricting allocations of securities in hot IPOs to certain company executive officers and directors, a practice known as "spinning," that originally was agreed to by the ten firms in the Global Settlement. The agreement is designed to promote fairness in the allocation of IPO shares and prevent the firms from using these shares to attract investment banking business.

### Summary of the Enforcement Actions

The enforcement actions allege that, from approximately mid-1999 through mid-2001, the firms engaged in acts and practices that created or maintained inappropriate influence by investment banking over research analysts, thereby imposing conflicts of interest on research analysts that the firms failed to manage in an adequate or appropriate manner. In addition, the regulators found supervisory deficiencies at both firms. The enforcement actions, the allegations of which were neither admitted nor denied by the firms, also included additional charges:

- ▶ Deutsche Bank Securities and Thomas Weisel Partners issued research reports that were not based on principles of fair dealing and good faith and did not provide a sound basis for evaluating facts, contained exaggerated or unwarranted claims about the covered companies, and/or contained opinions for which there were no reasonable bases in violation of NYSE Rules 401, 472, and 476(a)(6), and NASD Rules 2110 and 2210 as well as state statutes.

- ▶ Deutsche Bank Securities and Thomas Weisel Partners received payments for research without disclosing such payments in violation of Section 17(b) of the Securities Act of 1933 as well as NYSE Rules 476(a)(6), 401, and 472 and NASD Rules 2210 and 2110. The firms also made undisclosed payments for research in violation of NYSE Rules 476(a)(6), 401, and 472 and NASD Rules 2210 and 2110 and state statutes.
- ▶ Deutsche Bank Securities failed to timely produce all e-mail communications that had been requested during the investigation, in violation of Section 17(b) of the Securities Exchange Act of 1934 as well as NYSE Rule 476(a)(11) and NASD Rule 2110. Deutsche Bank Securities had produced less than one-fourth of the responsive e-mail by April 2003, when the Global Settlement was concluded. Over the following year, Deutsche Bank Securities produced an additional 227,000 e-mails, more than tripling its original production.

To implement these settlements, the SEC filed separate actions against each firm in Federal District Court in New York City and, concurrently, NYSE and NASD completed disciplinary proceedings pursuant to the disciplinary procedures of their respective organizations. At the state level, California, which together with two other state regulators—Maryland and the District of Columbia—participated in the joint investigation of Deutsche Bank Securities, has agreed to resolve the case. California, which was the lead state participating in the Thomas Weisel investigation, also has reached an agreement with that firm. Model settlement agreements have been finalized and the NASAA Board of Directors has recommended that all states accept the terms of the agreements. The proposed Final Judgments in the SEC actions are subject to Court approval.

*Securities and Exchange Commission v. Deutsche Bank Securities Inc.*, 04 CV 06909 (WHP) (S.D.N.Y.); *In re Deutsche Bank Securities Inc.*, HPD 04-128 (NYSE); *Deutsche Bank Securities Inc.*, NASD Letter of Acceptance, Waiver, and Consent, CAF No. 040062.

*Securities and Exchange Commission v. Thomas Weisel Partners LLC*, 04 CV 06910 (WHP) (S.D.N.Y.); *In re Thomas Weisel Partners LLC*, HPD 04-129 (NYSE); *Thomas Weisel Partners LLC*, NASD Letter of Acceptance, Waiver, and Consent, CAF No. 040061.